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JUL 15 1996

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Revision of Part 22 and Part 90	)	WT Docket No. 96-18
of the Commission's Rules to	)	
Facilitate Future Development	)	
of Paging Systems	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act--	)	
Competitive Bidding	)	

To: The Commission

**COMMENTS OF AIRTOUCH PAGING**

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## CONTENTS

SUMMARY . . . . .	ii
I. Preliminary Statement . . . . .	1
II. The Commission Should Grant Nationwide Exclusivity To Those Who Qualify . . . . .	3
III. Part 22 Interference Contour Rules Should Apply to Expansion of Shared Frequencies . . . . .	4
IV. Competing Applications Should Be Limited to Incumbent, Co-channel Licensees . . . . .	5
V. Incumbents Should Be Allowed to Expand 75 Miles In Sparsely Populated Areas . . . . .	6
VI. Secondary Licensing of Additional Transmitters Should Be Allowed . . . . .	7
VII. Carriers Should Be Allowed To Resolve Frequency Conflicts . . . . .	8
VIII. 40-Mile Rule Should Apply to Assignees and Transferees . . . . .	9
IX. Conclusion . . . . .	10

## SUMMARY

AirTouch Paging ("AirTouch"), a local, regional, and nationwide provider of paging and narrowband PCS services, herewith is submitting its comments on the petitions for reconsideration of the Commission's First Report and Order, released April 23, 1996 (the "Order"), in the Commission's proceeding to revise Part 22 and Part 90 of the Commission's rules to implement Section 309(j) of the Telecommunications Act of 1996 (the "Act") regarding competitive bidding.

AirTouch applauds the Commission's decision in its Order on Reconsideration of the Order ("Reconsideration Order") to allow incumbents on non-nationwide paging channels to expand 40 miles from sites for which expansion applications were filed as of September 30, 1995. Nonetheless, AirTouch believes that the Commission should take the following additional actions to allow the paging industry to continue to meet customer demand and serve the public interest: (1) exempt from the freeze carriers who qualify for nationwide exclusivity based upon applications filed prior to the freeze; (2) allow shared frequency licensees to make permissive modifications using the interference contours established in Part 22 of the rules; (3) limit competing applications for expansion to incumbent, co-channel licensees; (4) allow incumbents to expand their systems up to 75 miles in sparsely populated areas; (5) allow secondary licensing in certain situations; (6) allow carriers to continue to resolve situations involving mutual

exclusivities; and (7) allow assignees and transferees to utilize the 40-mile expansion rule where applicable.

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To: The Commission

**COMMENTS OF AIRTOUCH PAGING**

AirTouch Paging and its affiliates<sup>1/</sup> ("AirTouch"), by their attorneys, respectfully submit comments on the petitions for reconsideration of the First Report and Order<sup>2/</sup> (the "Order") released April 23, 1996 in the above-captioned proceeding. The following is respectfully shown:

**I. Preliminary Statement**

1. AirTouch has a substantial basis in experience for informed comment in this proceeding. AirTouch provides one-way paging and messaging services in 167 markets in 30 states, with over 2.4 million pagers in service. AirTouch

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<sup>1/</sup> The licensed affiliates of AirTouch Paging are: AirTouch Paging of Virginia, Inc., AirTouch Paging of Kentucky, Inc., AirTouch Paging of Texas, AirTouch Paging of California, and AirTouch Paging of Ohio.

<sup>2/</sup> Revision of Part 22 of Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, First Report and Order, FCC 96-183, WT Docket No. 96-18, released April 23, 1996.

currently provides local, state, regional, and nationwide service.<sup>3/</sup> With specific reference to this proceeding, AirTouch has filed, jointly with several other members of the industry, comments (the "Joint Comments")<sup>4/</sup> on the Commission's interim licensing proposal set forth in the Commission's NPRM.

2. AirTouch applauds the Commission's efforts, as evidenced by the Order on Reconsideration of First Report and Order (the "Reconsideration Order")<sup>5/</sup> to accord paging companies additional flexibility to serve the public interest during the pendency of the market area licensing proceeding by allowing incumbents on non-nationwide paging channels to expand 40 miles from sites for which applications were filed as of September 30, 1995, whether or not such applications were granted prior to February 8, 1996.<sup>6/</sup> As AirTouch and others noted in the Joint Comments, the industry's ability to expand and modify its paging systems is critical to both the industry itself and

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<sup>3/</sup> AirTouch has two nationwide CMRS authorizations.

<sup>4/</sup> Joint Comments on Interim Licensing Proposal, filed on March 1, 1996.

<sup>5/</sup> Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Order on Reconsideration of First Report and Order, FCC 96-260, WT Docket No. 96-18, released June 11, 1996.

<sup>6/</sup> Reconsideration Order, at ¶ 4.

the public interest.<sup>1/</sup> While AirTouch is encouraged by the Commission's decision to accord incumbents sorely needed expansion flexibility, there are nonetheless several other issues not addressed in the Order or Reconsideration Order that are worthy of serious consideration by the Commission, and which are discussed below.<sup>8/</sup>

## **II. The Commission Should Grant Nationwide Exclusivity To Those Who Qualify**

3. AirTouch agrees with the Personal Communications Industry Association ("PCIA"),<sup>2/</sup> and reiterates its position that the Commission should allow carriers who now hold authority to construct a nationwide system to continue with that construction by excluding them from the freeze as soon as they certify that they have placed in service a system that meets the nationwide exclusivity criteria set forth in Section 90.495(a)(3), which requires that 300 transmitters be dispersed throughout the United States to

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<sup>1/</sup> Joint Comments on Interim Licensing Proposal, at ¶¶ 4-8.

<sup>8/</sup> AirTouch's support for these additional methods of providing interim relief should not be construed as altering AirTouch's position that time is of the essence in getting final rules in place. The relief that has been granted does not provide all of the flexibility that is necessary to accommodate the rapidly growing paging industry.

<sup>2/</sup> The Personal Communications Industry Association Petition for Partial Reconsideration, at pp. 3-5.

meet specific coverage requirements in order to qualify for nationwide exclusivity.

4. This approach would effectively carry out the Commission's Part 90 exclusivity rules,<sup>10/</sup> ensure compliance with the procedural requirements of the Act, and serve the public interest.

### **III. Part 22 Interference Contour Rules Should Apply to Expansion of Shared Frequencies**

5. Metrocall has requested that the Commission should allow licensees on shared frequencies to make permissive modifications using the Part 22 interference contour rules.<sup>11/</sup> The Commission's Order expressly states that 931 and 929 MHz licensees may make permissive modifications by reference to the 931 MHz definition of "interference contours."<sup>12/</sup> There is no discussion of permissive modifications for shared frequency paging licensees such as 150 and 470 MHz private carrier paging licensees.<sup>13/</sup> Since Part 90 of the Rules does not have interference contour

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<sup>10/</sup> Section 90.495(c) states that "A proposed paging system that meets the criteria for channel exclusivity under paragraph (a) of this section will be granted exclusivity under this section at the time of initial licensing "

<sup>11/</sup> Metrocall, Inc. Petition for Clarification or Partial Reconsideration, at pp. 7-8.

<sup>12/</sup> Order, at ¶ 35.

<sup>13/</sup> AirTouch discussed this issue in the Joint Comments on Interim Licensing Proposal, at p. 9.

rules for these frequencies, it is not clear what a shared frequency licensee may do with regard to modification of their facilities. In addition, allowing shared frequency licensees to use the Part 90 interference contour rule creates regulatory symmetry between Part 90 and Part 22 licensees. Of course, shared frequency licensees would still be required to operate their systems in a manner that would avoid causing co-channel interference.

#### **IV. Competing Applications Should Be Limited to Incumbent, Co-channel Licensees**

6. Several members of the industry have stated that the Commission should limit competing applications for expansion to incumbent, co-channel licensees.<sup>14/</sup> AirTouch supports this limitation, which is consistent with the Commission's authority under Section 309(a) of the Communications Act of 1934, as amended,<sup>15/</sup> to establish eligibility criteria for licensees. In addition, this limitation would protect the public interest by reducing the opportunity for speculation and potential fraud by application mills which will solicit non-incumbents to file applications based on representations that they stand to

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<sup>14/</sup> Ameritech Mobile Systems, Inc. Petition for Clarification and/or Partial Reconsideration of Interim Licensing Rules, at p. 4; Paging Network, Inc. Petition for Reconsideration, at p. 4; and Blooston, Mordkofsky Petition for Partial Reconsideration, at p. 5.

<sup>15/</sup> 47 U.S.C. §309(a).

receive, cash or other consideration from incumbents. In addition, unrestricted applications, by blocking the applicant's ability to expand, would be adverse to the public interest by needlessly restricting the expansion of service area. Furthermore, non-incumbents can apply for participation in the market area auction, so they will not be precluded from participating for white space in the paging spectrum.

**V. Incumbents Should Be Allowed to Expand 75 Miles  
In Sparsely Populated Areas**

7. Several members of the industry have stated that the application of the 40-mile rule to densely populated areas is appropriate, but its application to less populated areas is too restrictive and should be replaced by a 75-mile rule in those areas.<sup>16/</sup> AirTouch agrees with this position. In sparsely populated areas, often the next service area is more than 40 miles away. By restricting expansion without regard to population density, the Commission is precluding the industry from meeting the public's needs and reducing the opportunity for competition and consumer choice by arbitrarily limiting a provider's ability to expand its system. Therefore, AirTouch supports using a 75-mile rule in sparsely populated areas.

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<sup>16/</sup> Blooston, Mordkofsky Petition for Partial Reconsideration, at p. 4; Radiofone, Inc. Petition for Partial Reconsideration, at p. 1.

**VI. Secondary Licensing of Additional Transmitters  
Should Be Allowed**

8. ProNet states that secondary licensing of additional transmitters should be allowed.<sup>17/</sup> AirTouch believes that, although secondary licensing of expansion sites by incumbent licensees is not sufficient, alone, to meet the needs of the industry, it does allow carriers to satisfy public demand and thereby serve the public interest in the interim before final rules are adopted and auctions are held. In that respect, secondary licensing is a natural corollary to the 40-mile expansion provision. AirTouch believes that the Commission should allow secondary licensing of additional transmitters where existing interference contours do not wholly encompass the new transmitter but do preclude a valid MX application. These modifications would be in the public interest because they would allow providers to improve coverage in areas where reliability is spotty due to terrain or building density, meet competition, satisfy the service needs of a new subscriber, and make coverage on a new channel comparable to what subscribers received on a previously developed channel.

9. AirTouch perceives no detriment to allowing incumbents to expand via secondary licensing. When the auctions begin any applications pending beyond the 40-mile

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<sup>17/</sup> ProNet, Inc. Petition for Partial Reconsideration, at pp. 10-11

fringe could be dismissed unless filed by a carrier participating in the auction for that frequency in that geographic area. Any applications pending after the close of the auction could be dismissed unless filed by the successful bidder for the license on that frequency in that market. Upon grant of a market-area license, all of the secondary sites authorized to the geographic licensee would be part of the geographic system and enjoy primary status and all pending applications for secondary sites could be dismissed as moot.

10. In addition, licensees should be able to make minor relocations within a two mile radius of an existing or authorized, but unconstructed, transmitter due to unanticipated changed circumstances.

#### **VII. Carriers Should Be Allowed To Resolve Frequency Conflicts**

11. ProNet states that the Commission should allow applicants to resolve competing applications for expansion.<sup>18/</sup> AirTouch supports this position. As noted in the Joint Comments,<sup>19/</sup> this approach promotes the public interest and is specifically authorized by the Omnibus

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<sup>18/</sup> ProNet, Inc. Petition for Partial Reconsideration, at p. 3.

<sup>19/</sup> Joint Comments on Interim Licensing Proposal, at ¶¶ 25-26.

Budget Reconciliation Act of 1993.<sup>20/</sup> Allowing settlements recognizes the extent of inter-carrier cooperation that currently exists in the paging industry, particularly in frequency coordination, frequency sharing, joint licensing, traffic exchange, and reselling. In addition, "greenmail" will not occur because longstanding settlement rules in this service have limited reimbursements to legitimate, documented out-of-pocket expenses.<sup>21/</sup>

**VIII. 40-Mile Rule Should Apply to  
Assignees and Transferees**

12. Metrocall has stated that it is unclear whether the 40-mile rule also applies to assignees or transferees of qualifying authorized sites if the assignor or transferor could have availed itself of it.<sup>22/</sup> AirTouch supports extending the 40-mile rule to such assignees and transferees because the paging industry is undergoing substantial consolidation and assignment of authorizations. Purchasers often acquire sites with the intention of expanding the coverage area. Thus, the public interest is served by

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<sup>20/</sup> 47 U.S.C. §309(j)(6)(E) specifically directs the Commission to make every effort to avoid mutually exclusive application situations by the use of, among other things, engineering solutions such as frequency coordination and amendments to eliminate frequency conflicts.

<sup>21/</sup> 47 C.F.R. §22.129.

<sup>22/</sup> Metrocall, Inc. Petition for Clarification or Partial Reconsideration, at p. 5.

allowing the assignees and transferees to invoke the 40-mile expansion rule.

**IX. Conclusion**

WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the Commission further relax the paging freeze as requested herein.

Respectfully submitted,

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July 15, 1996

**Certificate of Service**

I, Yvette Omar, a secretary with the law firm of Paul, Hastings, Janofsky & Walker, hereby certify that a copy of the foregoing **Comments of AirTouch Paging**, was sent via first class U.S. mail, postage prepaid, or hand-delivered on this 15th day of July 1996, to the following:

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